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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,580	03/25/2004	Bryan Christopher Chagoly	AUS920040049US1	7123
35525	7590	08/23/2007		
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER VERDI, KIMBLEANN C	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 08/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/809,580	Applicant(s) CHAGOLY ET AL.	
	Examiner KimbleAnn Verdi	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

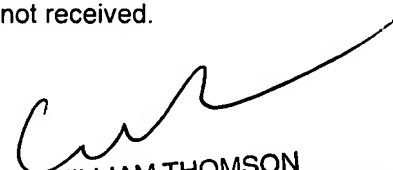
### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date March 25, 2004.

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**WILLIAM THOMSON**  
 SUPERVISORY PATENT EXAMINER
- 4) ☐ Interview Summary (PTO-918)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to the Application filed on March 25, 2004. Claims 1-30 are pending in the current application.

#### ***Specification***

1. The use of the trademarks EJB™, J2EE™, JAVA™, JVM™, IBM™, TIVOLI™, and WEBSPPHERE™ have been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 21-30, the "computer readable medium," in accordance with Applicant's specification, may be a signal bearing media, for example radio frequency and light wave transmissions. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical

devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Application Publication 2005/0039171 A1 to Avakian et al. (hereinafter Avakian).

6. As to claim 1, Avakian teaches a method for dynamically monitoring and linking cross-process/cross-thread transactions in a bytecode injected application, the method comprising the computer implemented steps of:

inserting a bytecode inserted probe into the bytecode injected application (paragraphs [0051]-[0052]), wherein the bytecode inserted probe detects a correlating token in an inbound request (paragraphs [0155] and [0177]), retrieves the correlating token and dynamically determines if the inbound request is a child of an out of process transaction (paragraphs [0156] and [0158]);

responsive to a determination that the inbound request is a child of an out of process transaction, recording the inbound request (paragraph [0159]); and

linking the inbound request to the out of process transaction (paragraph [0159]).

7. As to claim 2, Avakian teaches the method of claim 1, wherein the correlating token is passed in the inbound request by attaching the correlating token to one of an HTTP request (paragraph [0166]), an outbound JMS message (paragraph [0177]), a Common Object Request Broker Architecture (CORBA) message (paragraph [0176]), and a Simple Object Access Protocol (SOAP) header of a web service request (paragraph [0175]-[0177]).

8. As to claim 3, Avakian teaches the method of claim 1, wherein the bytecode inserted probe detects the correlating token in the inbound request using a TransactionInfo object (e.g. ExecCallback interface 36, Fig. 2 and 3, paragraph [0155]).

9. As to claim 4, Avakian teaches the method of claim 1, wherein the correlating token includes a transaction monitoring policy (paragraph [0163]).

10. As to claim 5, Avakian teaches the method of claim 4, wherein the transaction monitoring policy defines whether the inbound request should be recorded (paragraph [0163]).

11. As to claim 6, Avakian teaches the method of claim 1, wherein the step of linking the inbound request to the out of process transaction is performed by a transaction performance monitor (paragraph [0168]).

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12. As to claim 7, Avakian teaches the method of claim 1, further comprising: having the bytecode inserted probe determine if the inbound request is a root transaction (paragraph [0155]).

13. As to claim 8, Avakian teaches the method of claim 1, further comprising: having a transaction performance monitor determine if the inbound request is a root transaction (paragraph [0155]).

14. As to claim 9, Avakian teaches the method of claim 7, wherein the inbound request is a root transaction if the bytecode inserted probe fails to locate the correlating token within a container (paragraph [0158]).

15. As to claim 10, Avakian teaches the method of claim 1, wherein the bytecode inserted probe retrieves the correlating token from the inbound request while the bytecode inserted probe runs in-line with the inbound request (paragraphs [0155] and [0177]).

16. As to claims 11-20, these claims are rejected for the same reasons as claims 1-10 respectively, see the rejections to claims 1-10 above.

17. As to claims 21-30, these claims are rejected for the same reasons as claims 1-10 respectively, see the rejections to claims 1-10 above.

### ***Conclusion***

18. The prior art made of record on the accompanying PTO-892 and not relied upon, is considered pertinent to applicant's disclosure.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KimbleAnn Verdi whose telephone number is (571) 270-1654. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KV  
August 20, 2007

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER